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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/985,885	11/06/2001	Kenneth Molee	53394.000521	4548

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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

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DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/985,885

Applicant(s)

MOLEE ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 18-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: .

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, drawn to a method of attaching tensioned elastic strands to a substrate, classified in class 156, subclass 161.
 - II. Claims 18-25, drawn to an absorbent garment, classified in class 604, subclass 385.24.
 - III. Claim 26, drawn to an apparatus for manufacturing an absorbent garment, classified in class 156, subclass 578.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be manufactured with another and materially different apparatus such as one which coextruded the adhesive about the elastic without the use of a comb (the process requires that the elastics be coated with the specific coating device while the article could be manufactured by applying the adhesive in a materially different operation).
3. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used for coating conductors with adhesive prior to application of sheet insulation

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about the conductors in the manufacture of a flat conductor cable. Thus the apparatus as claimed could be used in a materially different process.

4. Inventions II and III are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product as claimed could be made by another and materially different apparatus such as an extrusion die through which the elastics were fed in order to coat the elastics with adhesive in an extrusion operation, for example.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Christopher Campbell on 12-20-02 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18-26 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1,2,5,and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.K. 2,118,021.

U.K. '021 taught a process for coating elastic strands in the manufacture of a disposable diaper wherein the elastic strands were fed through a comb structure where the strands were coated with an adhesive material at the comb. The reference suggested that the temperature of the coating was controlled and that the amount of material applied to the elastic strands was controlled. Additionally, the elastic strands were tensioned in application and secured onto a topsheet and a backsheet material with the adhesive and thus the reference suggested that the elastics were fed through the comb at a predetermined speed. The reference more specifically suggested that one skilled in the art at the time the invention was made would have utilized a coating device 42 which included a plurality of slits 60, 61, and 62 which were aligned in the nozzle coating device 42. the elastic strands were fed through the slits of the applicator 42 in

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order to coat the individual elastic strands 15A. the reference additionally taught that subsequent to the coating operation the elastic strands 15A were joined to the topsheet 11 and backsheet 12 in the joining operation. The reference additionally suggested that the elastics would have been tensioned to between 250-300% stretch in the process (and thus the speed with which the elastic strands were fed was regulated in the operation). The reference additionally suggested that one skilled in the art would have controlled the amount of adhesive applied to the elastic strand (see page 5, lines 43-57. clearly, the reference suggested the use of an applicator comb for application of adhesive to elastic strands in a process of joining the strands to two substrates when making a disposable diaper.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-6 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.K. 2,118,021 in view of the state of the prior art as exemplified by the applicant's admitted prior art.

The reference to U.K. '021 is discussed in full detail above in paragraph 10 and applicant is referred to the same for a complete discussion of the reference. The reference failed to teach that those skilled in the art at the time the invention was made would have applied elastics in the tummy section of the disposable absorbent article (the adhesive applicator and the application of

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the elastics in U.K. '021 was described as useful for application of elastics for the leg holes of the diapers). Additionally the reference did not envision the use of elastics in the waist portion of the diaper or elastics in cuffs (which would have required a fold over portion in the finished assembly). However, those versed in the art of manufacturing disposable absorbent articles were well aware of the use of elastics for each of the specified components of the disposable absorbent article including leg cuffs, waist elastics, and tummy elastics. The applicant in their disclosure described for example the application of elastics to the waist and tummy portions of the substrates in the manufacture of the disposable absorbent article, see page 15, lines 10-18, for example. It is abundantly clear and was well known to the ordinary artisan at the time the invention was made to apply elastics to disposable absorbent articles in the manufacture of the same wherein the tummy, waist and leg cuff portions incorporated elastics therein and the specific placement of the elastics upon the topsheet and/or backsheet would have dictated where the elastics were in the finished assembly. Because the manner in which one applied adhesive to the elastics was known as evidenced by U.K. '021 and because it was known to have been desired to apply elastics in a disposable absorbent article which included elastics for a tummy portion, a waist portion of elastic cuffs, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of U.K. '021 to coat the elastic strands prior to their application upon substrates in the manufacture of a disposable diaper wherein the elastics were known to have been incorporated within the diaper and or undergarment as waist elastics, leg elastics, leg cuff material, or tummy elastics as such elastic usage in absorbent diaper and undergarments was well known at the time the invention was made as evident from the state of the prior art as described by applicant in the admitted prior art.

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13. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 12 further taken with E.P. 372,120.

The references as set forth above in paragraph 12 suggested that those skilled in the art at the time the invention was made would have known how to apply adhesive upon elastics in the manufacture of disposable diapers. The reference failed to teach that one would have intermittently applied the adhesive as upon the elastic in the manufacture of the disposable undergarment or diaper, however those skilled in the art were well aware of such intermittent application as evidenced by E.P. '120. the reference to E.P. '120 suggested that those skilled in the art when applying adhesive to elastics with a comb mechanism would have known how to control the coating such that the adhesive was applied intermittently upon the elastics. More specifically, applicant is referred to E.P. '120 Figure 1, applicator 20 which included grooves therein through which the elastics passed, see Figures 2-4, elastics 18. the reference additionally suggested that the application of the adhesive 30 was intermittently applied to the elastics. It would have been obvious to one of ordinary skill in the art at the time the invention was made to intermittently apply adhesive to the elastics in the manufacture of a disposable diaper as such intermittent application was known as evidenced by E.P. 372,120 in the process of making a disposable absorbent article as set forth above in paragraph 12. note that the application of adhesive intermittently would have facilitated application of elastics and maintaining the elastics in a tensioned state in only those regions about the leghole opening, for example to provide good gathering at the legholes.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 13 further taken with any one of Buell, Brody, or E.P. 626,161.

The references as set forth above in paragraph 13 suggested that those skilled in the art at the time the invention was made would have applied the elastics between a topsheet and a backsheet in the manufacture of a disposable diaper, where the adhesive was applied intermittently to the elastics, however there is no indication that the elastics would have been severed in the manufacture of the diaper wherein the elastics would have snapped back after the cutting operation as a result of the lack of adhesive in the region of the cut in order to form, for example leg elastics for the diaper. However, each one of Buell, Brody and E.P. '161 suggested that it was known at the time the invention was made to apply the elastics to the substrate with a discontinuous application of adhesive and to sever the unadhered elastic in order to allow the same to snap back. Such would have allowed one to better apply the leg elastics for example which generally only requires elasticity in the crotch region of the diaper for example. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of any one of Buell, Brody, or E.P. 626,161 in the process of manufacturing a disposable absorbent article wherein the article was subjected to cutting to form the discrete article wherein the severing operation would have taken place where the adhesive was not applied to the elastics in order to allow the elastics to snap back in the operation of making a disposable diaper as set forth above in paragraph 13.

15. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 12 further taken with Japanese Patent 61-152801.

As discussed above in paragraph 12, it was known at the time the invention was made to apply the adhesive to the elastics with an adhesive applying comb device. The references failed to teach the intermittent application of the adhesive upon the elastics with the device or the snap

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back of the elastics after severing in the regions where no adhesive was applied. The reference to Japanese Patent '801 suggested that it was known to apply the adhesive to the elastic intermittently and following securing of the elastic to the substrates, severing the elastics in the non-adhered regions in order to allow the unadhered elastics to snap back. The reference more specifically taught the application with an applicator comb as depicted in Figure 5 where the elastics were individually coated with the adhesive as they passed through the grooves of the applicator. The adhesive applied with the applicator 10 was applied in a discontinuous application, see adhesive 11 of Figure 2. such an application required the shut off and restart of the adhesive being dispensed from the applicator of Figure 5. after application, the elastics in the non-adhered regions were cut in order to allow the elastics to snap back to their adhered lengths, see Figure 3 and note that the diapers were severed in Figure 2 in the regions where no adhesive 11 was applied so that the elastics would snap back. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the adhesive intermittently as well as sever the elastics in the regions where no adhesive was applied as evidenced by Japanese Patent 61-152801 in the process of making a disposable diaper as set forth above in paragraph 12.

16. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 12 further taken with any one of Faulks et al, Laux et al, or St. Louis et al.

While the references as set forth above in paragraph 12 suggested the overall operation, they failed to specify the specific denier for the elastic strands used in the disposable absorbent article. Applicant is advised that such elastic strand materials were well known to the art and

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commercially available in the form of Lycra® as well as from Globe Manufacturing. The specific deniers employed were known in the art of making disposable absorbent articles wherein elastics were attached in the article manufacture as evidenced by any one of Faulks et al (column 16, lines 4-14), Laux et al (column 14, lines 18-30), or St. Louis et al (column 21, lines 1-15). Because it was commercially available elastic strand material, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the elastic strands of any one of Faulks et al, Laux et al, or St. Louis et al in the process of applying elastic strands to a substrate in the manufacture of a disposable absorbent article as set forth above in paragraph 12. the use of commercially available and well known elastic strand materials is certainly within the purview of the ordinary artisan.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Jeff H. Aftergut
Primary Examiner
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JHA

January 17, 2003